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SERVICE DATE - AUGUST 25, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-567 (Sub-No. 1X)

RUTHERFORD RAILROAD DEVELOPMENT CORPORATION--
ABANDONMENT EXEMPTION--IN RUTHERFORD COUNTY, NC

Decided: August 22, 2000

Rutherford Railroad Development Corporation (RRDC) and Southeast Shortline, Inc. d/b/a Thermal Belt Railway (TBRY) jointly filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances for RRDC to abandon and TBRY to discontinue service over a 7.87-mile line of railroad between milepost SB-180.47 in Spindale and milepost SB-188.34 near Gilkey in Rutherford County, NC. Notice of the exemption was served and published in the Federal Register on July 27, 2000 (65 FR 46195-96). The exemption is scheduled to become effective on August 26, 2000.

On July 12, 2000, the Bechtler Development Corporation (BDC) filed a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to enable it to negotiate with RRDC for use of the line as a trail. BDC submitted a statement indicating its willingness to assume full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service (rail banking). By letter filed July 17, 2000, RRDC indicated its willingness to negotiate with BDC for interim trail use.

In a submission filed August 3, 2000, King Associates L.L.P. (King), which identifies itself as a reversionary landowner, opposes use of the right-of-way as a trail. King asserts that it is the fee holder to the right-of-way and that it has leased the property to a business that has been using the property since 1995. King expresses concern that a recreational trail could bring trespassers, vandalism and littering to the right-of-way. King also asserts that the right-of-way previously has been abandoned and that it has reverted to King (and perhaps to other reversionary interest holders). By reply filed August 7, 2000, RRDC contends, citing Preseault v. I.C.C., 494 U.S. 1 (1990) (Preseault), that if the right-of-way were made available for interim trail use, any claim that the property of any reversionary landowner has been taken could be the brought in United States Court of Federal Claims under the Tucker Act, 28 U.S.C. 1491(a)(1). RRDC also maintains in its reply that the right-of-way is still a line of railroad subject to Board jurisdiction (and therefore is available for trail use under the Trails Act).

On this record, King has not demonstrated that the line has been abandoned and that the Board therefore lacks jurisdiction to issue a NITU. As RRDC explains, this property, even if previously authorized for abandonment by the Southern Railway Company, again became a railroad line subject to the Board's jurisdiction in 1989, when RRDC purchased it and Thermal Belt Railway leased it and undertook to operate it in 1989. See Southeast Shortlines, Inc., d/b/a Thermal Belt Railway--Lease, Operation and Acquisition Exemption--A Rail Line in Rutherford County, NC, Finance Docket No. 31484 (ICC served June 22, 1989).

Under the Trails Act and our implementing rules, if a prospective trail user requests a trail condition and the carrier indicates its willingness to negotiate a trail agreement, the Board's role under the Trails Act is largely ministerial. Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990) (Goos). To invoke the Trails Act, a prospective trail sponsor needs only to file a request accompanied by the necessary statement of willingness to assume liability and acknowledgment that interim trail use is subject to possible reinstatement of rail service. See National Ass'n of Reversionary Property Owners v. STB, 158 F.3d 135, 138 (D.C. Cir 1998); 49 CFR 1152.29(a) and (d). If the railroad indicates its willingness to negotiate, the Board must then issue a NITU. Goos, 911 F.2d at 1295.

If a landowner believes that trail use has resulted in a taking of his or her property, the landowner can seek compensation in the Court of Federal Claims under the Tucker Act, 28 U.S.C. 1491, which has a 6-year statute of limitations. Preseault. Also, because trails must be maintained according to state and local land use plans, zoning ordinances, and public health and safety legislation, abutting property owners allegedly harmed by improperly maintained trails can present their complaints to the appropriate state, regional, or local entities. See Burlington Northern Railroad Company--Abandonment Exemption--In Skagit County, WA, Docket No. AB-6 (Sub-No. 299X) (ICC served Oct. 19, 1993).

Because BDC's request complies with the requirements of 49 CFR 1152.29 and RRDC is willing to enter into Trails Act negotiations, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, RRDC may fully abandon the line. See 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. King's filing and RRDC's reply will be placed in the public docket.

3. Upon reconsideration, the notice of exemption served and published in the Federal Register on July 27, 2000, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing August 26, 2000, the effective date of the exemption (until February 22, 2001).

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by February 22, 2001, interim trail use may be implemented. If no agreement is reached by that time, RRDC may fully abandon the line.

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary